

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

February 23, 2009

7:00 p.m. Town Hall

Present: Peter Hatem, Chair
Elaine Falender
Liza Quinn

Beth Richardson
Barbara Schenkel
Thomas Dolan

Absent: James Huebener

Also present was Maureen O'Meara, Town Planner.

Mr. Hatem called the meeting to order and called for discussion or corrections of the minutes of January 20, 2009. There were two minor corrections and Mr. Dolan moved to accept the minutes as amended. Mrs. Richardson seconded and the motion carried, 6-0.

OLD BUSINESS

Pipken Private Accessway Permit - Allen Pipken is requesting a Private Accessway Permit to create a second lot located at 22 Eastman Rd (U27-4), Sec. 19-7-9, Private Accessway Permit Public Hearing.

Jim Nadeau of Nadeau Land Surveying noted that they had been before the Board a couple of months ago. He said he has a revised set of plans which have not yet been submitted to the Board. He said the new plans have addressed the corrections requested at the last Planning Board meeting they attended.

The site is at 22 Eastman Road. It is a current one unit single family home. This project would create a second lot. The new accessway is required because the new lot does not have enough road frontage, or access. The drainage and sight distances have been addressed.

Mr. Hatem opened the public hearing. No one came forward to speak, so Mr. Hatem closed the public hearing.

Mrs. Schenkel asked if the attorney had reviewed the maintenance agreement.

Ms. O'Meara replied that he has. He was comfortable with the agreement.

Ms. Falender made the following motion:

Findings of Fact

1. Allen Pipkin is requesting a Private Accessway to create a new lot located at 22 Eastman Rd, which requires review under Sec. 19-7-9, Private Accessways.
2. The Town Engineer has reviewed the plans recommended that additional information be provided to assure construction consistent with the approved plans.
3. The turnaround which is required by the Private Accessway standards is not located on the lot created by the Private Accessway Permit.
4. The application substantially complies with Sec. 19-7-9, Private Accessways, and Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Allen Pipkin for a Private Accessway to create a new lot located at 22 Eastman Rd be approved, subject to the following conditions:

1. That the plans be revised to comply with the recommendations of the Town Engineer in his letter dated 2/9/09, paragraphs 3 and 5.
2. That the applicant submit appropriate easement/restriction language to preserve the proposed turnaround and the right for lot A to use the turnaround in a form acceptable to the Town Attorney.
3. That the above conditions be met prior to signing the plan and recording in the Cumberland County Registry of Deeds.

Mrs. Richardson seconded the motion and it passed 6-0.

NEW BUSINESS

Dawe Rd Extension Private Road Review - Nicholas Tammaro is requested a private road review to extend Dawe Rd to a new lot located in the vicinity of Dawe Rd and Valley Rd in compliance with the road standards in the Subdivision Ordinance, Sec. 16-3-2, Road Design and Construction Standards Completeness.

Mr. Nick Tammaro said he is proposing to build a 14 ft. gravel driveway over a street shown on an approved subdivision plan, at the corner of Valley Road and

Dawe Road. The farmland on which the driveway will be located is part of the Maxwell land. He proposes to build a single family house on a 2.66 acre lot. He is seeking private road approval instead of a private accessway in order to preserve the Maxwell's access to their remaining 78 acres.

He is requesting a waiver from private road standards because there are no plans for future development of this parcel of land. There will be very little traffic because it will only serve one single family home. He has worked with Cape Elizabeth Public Works Director, Bob Malley on the drainage issues.

At the request of Mr. Hatem, Ms. O'Meara outlined the issues the Board will have to decide in their deliberations on the completeness of this plan.

Ms. Falender said she understands and is sympathetic to the reasons why Mr. Tamaro is requesting these waivers, but she feels the Board needs to go through the process of deciding each waiver on its own. She is not sure if this is a completeness question or a question for the next step.

Ms. O'Meara said that if the board makes a finding of complete, then anything not specifically requested is deemed to be waived. Waiving of standards is not the same as waiving completeness. The Board can also waive the standards if they so decide under the Subdivision Ordinance.

Ms. Quinn asked if the Town Attorney has reviewed the maintenance agreement and the purchase and sale agreement.

Ms. O'Meara replied that he has.

Mrs. Schenkel wants the Board to go through the points one by one and do the waivers one at a time.

Ms. O'Meara cautioned the Board not to waive any submission requirements on items they will need to review later on in the process. Don't waive information that you will need later on.

Mrs. Richardson questioned whether she is correct in reading the checklist correctly that most of the items are complete with the exception of no. 12.

Ms. O'Meara said that no. 12 is all the specific information that an engineer needs to determine that the drainage and other technical concerns are met. Mr. Tamaro has chosen to go with what he has in hopes that the Board will not require him to go to the expense of an engineering study. He wants a waiver of the submission requirement for that information.

Mr. Dolan wanted to know if the Board has historically waived submission requirements.

Ms. O'Meara replied that the Board has done such waivers in the past. She noted that Mr. Tammaro has provided some information, but not enough for an engineer to make a determination on the drainage and storm water issues.

Mrs. Schenkel wants the applicant to clarify the plans for the turnaround. She says the plan is confusing and wants it corrected.

Then the Board decided to go through the items in the Town Engineer's letter of February 9, 2009.

The Board started at number 3. With the guidance of Ms. O'Meara who said that a 40 ft. Right of way is permissible, the Board agreed to waive that item.

The discussion of item 4 was very wide ranging.

Mrs. Richardson was concerned that the engineer has not enough information to provide an opinion. He does not have sufficient detail to provide an analysis.

Mr. Tammaro replied that he has consulted with Mr. Malley all along the way. He has followed Mr. Malley's advice but he has not hired a professional engineer. He cannot afford to hire an engineering study, and if he is required to do so, that will make the project unworkable for his budget. He said it will be the end of what they are trying to do, going with a private road as opposed to a private accessway. He is proposing a private road to preserve access to the rest of the Maxwell's land.

Ms. Quinn wondered why a private accessway would permanently remove access to the remaining parcel of land.

Ms. Falender replied that a private road can serve more than one parcel, where by the code a private accessway can only serve one lot.

Mrs. Schenkel agreed that the applicant is doing the right thing by going for a private road because of the large parcel that will be affected.

Mr. Hatem noted that if you were developing the large parcel, then you would spend the money for the road, but that it is difficult for a single house to bear that entire expense.

Ms. O'Meara wants the private road to preserve access for the Maxwells. Even though there is no proposal to develop that 78 acres, she does not want their access denied for the future.

Mr. Hatem is concerned about how to preserve the town's interest and still allow the applicant to get the permission he needs.

Ms. O'Meara also directed the Board to consider that the Public Works Director's comments about this project would be the same as for a private accessway.

After a further discussion, it was suggested that the applicant might try to secure a memo from the Public Works Director that says he's comfortable with this plan.

Mrs. Richardson said she had hoped to satisfy the Town's concerns without costing the applicant a large amount of money.

Ms. Falender is concerned about setting a precedent in this case. When another applicant wants a similar waiver how can we deal with that one. What are the unique factors in this case?

Mr. Tamaro said the special case is that there are 78 acres that need access. And he said he hopes to begin farming some of that land.

Mr. Hatem is not ready to ask the applicant to provide more information.

Mrs. Richardson suggests that the private road is the best approach and the Board might deem this complete with the requirement that the applicant meet with the Town Engineer and the Public Works Director and address all the issues in the letter either by agreement of those parties or notes on the plans or somehow to address them. She feels we need to move this forward to the next step.

Ms. Falender does not agree. She is concerned that the Town Engineer cannot give an opinion on the drainage and we may need that information.

Mrs. Schenkel wants the Board to give the waivers on what they will agree to waive.

The Board then went on to consider each item in the Town Engineer's letter.

#5-Sight distances were discussed and it was decided that they are a necessary item.

#6-Sidewalks – waived

#7-Landscaping-waived

#8-Curbing- waived

#9-Turnaround- need to get a letter from the Fire Chief

#10-Monuments-waived

#11-Drainage-skip over for now

#12-Base Gravel-Mr.Tammaro will change his detail to meet these requirements.

#13-Road Width-waived

#14-was fulfilled

#15-Utilities on plan- the applicant will need to show them on the plans.

#16- Inspection-note needs to be on the plan.

#17-needs a note on the plan.

Drainage needs to be detailed and discussed with the Town Engineer. Mr. Dolan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Nick Tammaro for a Private Road Review under the Subdivision Ordinance to extend Dawe Rd be deemed complete, incorporating all the terms and conditions as discussed at this meeting.

Mrs. Richardson seconded the motion and it passed 5-1 (Ms. Falender opposed). The Board decided that a site walk is needed. It is agreed that the site walk will be held Saturday February 28 at 9:00am.

Mr. Dolan then made the following motion:

BE IT FURTHER ORDERED that the above application be tabled to the March 17, 2009 meeting of the Planning Board, at which time a public hearing will be held.

Mrs. Schenkel seconded the motion and it passed 6-0.

Mr. Dolan recused himself from the following matter.

Creteau Private Accessway Permit - Jeannette Creteau is requesting a Private Accessway Permit for a vacant lot located at 112 Delano Park (U7-12), Sec. 19-7-9, Private Accessway Permit Completeness.

Mr. John Mitchell of Mitchell and Associates and Bob Danielson, attorney for Ms. Creteau presented the project to the Board.

Mr. Mitchell outlined the proposal for a new lot at the end of Delano Park Entrance #1. Lot 4, the proposed lot, is a non-conforming lot in Residence zone A and is in the Shoreland Zone. There is a 20 ft wide unimproved roadway located along the line of lots 4 and 5.

Mr. Mitchell showed photos of the roadway and the driveway. He noted that the roads in Delano Park vary from 9 to 12 ft. wide.

Lot 4 does not have 125 ft. of road frontage, the applicant is requesting a private accessway that will provide the road frontage needed. This will be located on the 20 ft. right of way and they have provided an access easement of 10 ft. bordering the existing right of way to bring the access to the 30 ft. minimum required.

The Fire Chief has agreed to a 12 ft. wide paved right of way with a 2 ft. grass strip for the road. The turnaround will have a permeable paver as a surface. This will minimize the impervious surface on lot 5, Mrs. Creteau's residence. Mr. Mitchell said he has met with the Fire Chief and the Code Officer and both have approved his plans.

The water line will extend up the utility easement and there will be a relocated water main to lot 5. There is an approved on-site septic system on lot 4. The stormwater management has been designed to utilize the existing natural terrain.

He said they have addressed all the staff comments and the letter from Steve Harding, Town Engineer dated February 9, 2009.

Bob Danielson then spoke. He said he has been working with the Delano Park Association, who owns the road. He has secured an agreement between Mrs. Creteau and the Association. It provides right title and interest in Mrs. Creteau to allow her to improve the road and make all the needed changes. It will allow the utilities easements. The Association has given its approval to make any changes as required by the Planning Board. Since the Association maintains and services all the roadways in Delano Park, they will also add the additional roadways to their maintenance.

Mr. Danielson has also drawn up an easement deed from Mrs. Creteau to the Town for the 10 ft. strip along the roadway in order to make up the 30 ft. required for the accessway. They have agreed to maintain the pervious surface turnaround.

Mrs. Schenkel made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Jeanette Creteau for a Private Accessway Permit to make an existing vacant lot without frontage on a town road and located almost at the end of Delano Park Entrance #1 be deemed complete.

Mrs. Falender seconded the motion and it was passed 5-0.

There was a brief discussion of a letter from an abutter about the plantings, and Mr. Mitchell said they have addressed the concerns in that letter.

After a brief discussion the Board decided they did not need a site walk.

Ms. Schenkel made the following motion:

BE IT FURTHER ORDERED that the above application be tabled to the March 17, 2009 meeting of the Planning Board, at which time a public hearing will be held.

Mrs. Richardson seconded the motion and it was passed 5-0.

Mrs. Schenkel than asked about a road that shows on the plan. It is a paper street. It is not an improved way therefore it does not fulfill the frontage requirement.

Mrs. Richardson made a motion to adjourn, seconded by Mrs. Schenkel. The motion passed, 5-0. The meeting was adjourned at 8:40 pm.

Respectfully submitted,

Hiromi Dolliver

